

WHEREAS, Ms. Babines retained the services of the American Civil Liberties Union and filed suit at the above-captioned number averring, *inter alia*, that the above actions by Adams Township and the Adams Township Zoning Hearing Board constitute a violation of Ms. Babines' First Amendment and Pennsylvania constitutional free expression rights and/or its ordinances are unconstitutionally vague or overbroad; and

WHEREAS, Adams Township denies said averments; and

WHEREAS, Ms. Babines and the ACLU have proposed a settlement agreement to resolve the outstanding motion for preliminary and permanent injunctive relief, which Adams Township has accepted subject to certain modifications which have been agreed to by Ms. Babines and the ACLU, and the parties desire to set forth this Agreement in writing.

THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

1. The Code Enforcement Officer shall issue Ms. Babines an occupancy permit for the "Oh my You're GORGEOUS" dance studio.

2. Ms. Babines agrees that the following conditions shall be made an integral part of the grant of the occupancy permit.

A. No nudity shall be permitted on or at the premises. As defined herein, "nudity" refers to the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state. Nothing herein shall prohibit any person from changing their clothes in a restroom, dressing room or a closed office. Also, as utilized herein, the term "premises" refers to the property situated at 222 Mars

Valencia Road in Adams Township which Ms. Babines currently leases from Mr. John Watson.

B. No pornographic materials, whether books or videos or any form of electronic communication, shall be sold, distributed, or made available for viewing on or at the premises. As utilized herein, "pornographic" shall refer to "baring of human genitalia, the depiction of nude individuals engaging in sexual activity", and/or the showing of the female breast with less than a fully opaque covering of any part of the nipples.

C. No "sex toys", "adult novelties", or related paraphernalia shall be sold, distributed, advertised or otherwise made available on or at the premises. As utilized herein, "sex toys" shall refer to "objects or devices that are used and/or marketed so as to enhance sexual pleasure and/or used primarily for the stimulation of the human genitalia or anus." "Adult novelties" shall refer to items characterized by the depiction, reference to or description of sexual activity, human genitalia or anus.

D. The only participants in dance studio classes shall be enrollees and instructors. No spectators shall be permitted to attend or observe dance studio classes except that parents shall be permitted to attend classes geared to children. In addition, no "peep show booths", including, but not limited to, closed booths, cubicles and/or holes in partitions, shall be permitted on the premises.

E. No alcoholic beverages shall be served on the premises;

F. Any and all websites maintained and/or operated by Ms. Babines and/or her agents to advertise or promote the "Oh my You're GORGEOUS" dance studio business shall include a disclaimer that "sex toys" and "adult novelties" are not

available at the dance studio, but if, and only if sex toys or adult novelties are advertised elsewhere on the website.

G. Plaintiff shall not sell, distribute or otherwise make available at the premises strippers (male and female) or massage therapy. Nothing herein shall prohibit the sale or distribution of dance related items, including without limitation, hula hoops, dance poles, clothing, shoes, and the like.

H. Ms. Babines shall comply with all other provisions of the Adams Township Zoning Ordinance.

I. Ms. Babines shall forthwith submit an amended sign permit application form to the Code Enforcement Officer for the existing "Oh my You're GORGEOUS" sign now situated at the premises, and the Code Enforcement Officer's approval shall not be unreasonably withheld.

3. The parties specifically agree that this Agreement is a compromise of a disputed claim and shall not constitute an admission of fact or liability by any party, including, without limitation, (a) an admission by Adams Township that its Code Enforcement Officer erred in denying an occupancy permit, (b) an admission by the Zoning Hearing Board of Adams Township that it erred in upholding the Code Enforcement Officer's denial of an occupancy permit, (c) that Adams Township or the Zoning Hearing Board of Adams Township violated the First Amendment or Pennsylvania constitutional right of expression of Ms. Babines, nor (d) that Adams Township's ordinances are unconstitutionally vague or overbroad.

4. Nothing herein shall act to stay and/or to bar any claims, defenses or arguments which have been or which will be asserted by the parties (Plaintiff and all Defendants).

5. This Court has continuing jurisdiction to enforce the terms and conditions of this Agreement, whether or not the instant action has been dismissed or otherwise closed on the Court's docket. Zoning matters relating to the instant property that do not implicate and are not governed by this Settlement Agreement and Consent Order may be enforced by the Township in state court.

6. This Agreement shall be binding upon the parties hereto and their successors, representatives, assigns, executors and administrators.

7. The provisions of this Agreement shall not be interpreted for or against any party because that party or party's representative drafted this Agreement in whole or in part.

8. This Agreement constitutes the entire Agreement among the parties hereto as to the issue of injunctive relief and merges herein any and all prior negotiations and agreements.

9. If any term, condition, clause or provision of this Agreement shall be determined to be void or invalid at law or for any other reason, then only that term, condition, clause or provision shall be stricken from this Agreement as is held to be void or invalid, and in all other respects this Agreement shall remain in full force and effect.

10. Ms. Babines' Motion for Injunctive Relief is hereby withdrawn.

11. This action will proceed in the ordinary course to adjudicate or resolve liability and damages, if any.

IN WITNESS WHEREOF, the parties' counsel, with their consent, hereto set forth their hands and seals on this 15th day of October, 2008.

/s/ Witold J. Walczak
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SO ORDERED:

Judge, United States District Court
Western District of Pennsylvania

Date